NEW YORK TIMES

4 December 1977

A Constitutional Issue

The C.I.A. Is Worried About Its New Leaks

By ANTHONY LEWIS

WASHINGTON—Over the last five years the Central Intelligence Agency has fought a series of battles, legal and political, to keep a shield of secrecy over its activities. Now the agency faces a fresh problem, and a considerable one.

Frank Snepp, a former employee, has just published a highly critical book, "Decent Interval." A senior analyst on Vietnam until he left the agency in 1976, Mr. Snepp charges that the American departure in 1975 was so bungled that thousands of Vietnamese collaborators were left behind and many more exposed to retaliation by the Communists. The agency, reacting quickly and firmly, has denied the charges, and asked the Justice Department to consider legal action against Mr. Snepp.

But the matter does not end with Mr. Snepp. Agency officials are concerned that other former employees may be inspired to write or may even have books on the way. Moreover, more than 800 people from the Operations Division—those who carry out covert activities—have been given notice by the director, Stansfield Turner, and will be leaving over the next two years. Officials fear that they will be tempted by publishers' offers or moved by their own feelings to write. Unlike previous ideological disagreement with agency objectives and methods, criticism from these sources might, like Mr. Snepp's, take the line: "If we're going to have a clandestine service, let's have a good one."

The question is what the Government can do to fend off this perceived new threat to intelligence secrecy. It is more than a narrow legal issue. For any official device to inhibit freedom of expression runs into constitutional doubts, and Jimmy Carter as a campaigner made a point of saying that he believed in open government.

The agency succeeded in censoring the first important book about it, "The C.I.A. and the Cult of Intelligence" by Victor Marchetti and John Marks. The device was a suit to make Mr. Marchetti, a former employee, submit any manuscript for clearance before publication. The suit was based on a secrecy agreement signed by all who join the agency, and the United States Court of Appeals for the Fourth Circuit held that that was a "contract," binding forever, that could be enforced by injunction.

The court ordered Mr. Marchetti not to write or say anything based on information classified while he was in the agency—for the rest of his life. The United States Supreme Court twice refused to hear the case, and the book was published with blanks where passages had been deleted.

Mr. Snepp also signed a secrecy agreement: "I hereby agree that I will never divulge, publish or reveal by writing, word, conduct or otherwise any classified information, including C.I.A. cover arrangements, to any unauthorized person without prior consent of the Director of Central Intelligence or his representative." He also promised Director Turner last May to submit the manuscript of this book. (He explains that he broke the promise because the agency had leaked one-sided, self-promoting versions of the same Vietnam events).

In the event, Random House got the book into print and distributed thousands of copies before the agency knew about it. The question now is what can the Government do that would amount to more than locking the barn door after the horse has been stolen.

To discourage other potential authors, one possibility being discussed in the Justice Department is a suit for damages against Mr. Snepp, to attach his royalties, say, and claim them for violation of the secrecy "contract." A difficulty with that idea is that it might reopen in court the whole contract theory of the Marchetti case, which some think was legally tenuous. Seeking damages from Mr. Snepp might also appear to be vindictive retaliation.

Another idea would be to seek an injunction against Mr. Snepp barring him from any further speeches or comments on matters he learned while in the agency. That is what was done to Mr. Marchetti. But that extraordinarily sweeping and perpetual restraint, unique in American history, troubles many civil libertarians; and it seems doubtful that the Carter Administration would want to follow an example set during Richard Nixon's Administration.

Apart from the circumstances of its origin, the legal doctrine of the Marchetti case makes some Carter Administration lawyers uneasy. For one thing, it imposes a prior restraint of an extreme kind on any former intelligence officer who wants to discuss his or her experience, something like press licensing in Stuart England. When the would-be author submits his manuscript, the intelligence agency may take months to read it. The agency may demand deletions of the most trivial material. It tried to cut out of the Marchetti book, until shamed out of the demand, the fact that Mr. Helms in a National Security Council meeting had mispronounced the name Malagasy.